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"deaf," but it has come to signify "drunken," "roguish," "wicked," "sinful," etc.

Institutional killing will be treated under its proper head. It was based on the principle of retaliation, or, as more popularly expressed, "getting even," and was considered necessary in order to placate the souls of the departed. I have already remarked that the victim was sometimes devoted to death in advance, and Bartram mentions a case in which he was selected by lot. The following quotation from Adair shows what happened when murder was committed within the tribe, as well as the Indian attitude toward man killing generally:

"The Indians transmit from father to son, the memory of the loss of their relation, or of one of their own tribe or family, though it were an old woman if she was either killed by the enemy, or by any of their own people. If indeed the murder be committed by a kinsman, the eldest can redeem: however, if the circumstances attending the facts be peculiar and shocking to nature, the murderer is condemned to die the death of a sinner 'without anyone to mourn for him,' as in the case of suicide; contrary to their usage toward the rest of their dead.

"In the late Cheerake War, at the earnest persuasions of the trading people, several of the Muskohge warriors came down to the barrier-settlements of Georgia, to go against the Cheerake, and revenge English crying blood: but the main body of the nation sent a running embassy to the merchants there, requesting them immediately to forbear their unfriendly proceedings, otherwise, they should be forced by disagreeable necessity to revenge their relations' blood if it should chance to be spilt contrary to their ancient laws: . . . If an unruly horse belonging to a white man, should chance to be tied at a trading house and kill one of the Indians, either the owner of the house, or the person who tied the beast there, is responsible for it, by their lex talionis; . . . If the Indians have a dislike to a person, who by any casualty was the death of one of their people, he stands accountable, and will certainly suffer for it, unless he takes sanctuary.

"I knew an under trader, who being intrusted by his employer with a cargo of goods for the country of the Muskohge, was forced by the common law of good faith, to oppose some of those savages in the remote woods, to prevent their robbing the camp: the chieftain being much intoxicated with spirituous liquors, and becoming outrageous in proportion to the resistance he met with, the trader like a brave man, opposed lawless force by force: some time after, the lawless bacchanal was attacked with a pleurisy, of which he died. Then the heads of the family of the deceased convened the lesser judicatory, and condemned the trader to be shot to death for the supposed murder of their kinsman; which they easily effected, as he was off his guard, and knew nothing of their murdering design.

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628 682 His employer, however, had such a friendly intercourse with them, as to gain timely notice of any thing that might affect his person or interest; but he was so far from assisting the unfortunate brave man, as the laws of humanity and common honour obliged him, that as a confederate, he not only concealed their bloody intentions, but went basely to the next town, while the savages painted themselves red and black, and gave them an opportunity of perpetrating the horrid murder. The poor victim could have easily escaped to the English settlements if forewarned, and got the affair accommodated by the mediation of the government. In acts of blood, if the supposed murderer escapes, his nearest kinsman either real or adopted, or if he has none there, his friend stands according to their rigorous law, answerable for the fact. . . . .

181 628 682 "There never was any set of people, who pursued the Mosaic law of *retaliation* with such a fixt eagerness as these Americans. They are so determined in this point, that formerly a little boy shooting birds in the high and thick corn-fields, unfortunately chanced slightly to wound another with his childish arrow; the young vindictive fox, was excited by custom to watch his ways with the utmost earnestness, till the wound was returned in as equal a manner as could be expected. Then, 'all was straight,' according to their phrase. Their hearts were at rest, by having executed that strong law of nature, and they sported together as before. This observation though small in itself, is great in its combined circumstances, as it is contrary to the usage of the old heathen world. They forgive all crimes at the annual atonement of sins, except murder, which is always punished with death. The Indians constantly upbraid us in their bacchanals, for inattention to this maxim of theirs; they say, that all nations of people who are not utterly sunk in cowardice, take revenge of blood before they can have rest, cost what it will. The Indian Americans are more eager to revenge blood, than any other people on the whole face of the earth. . . .

"I have known the Indians to go a thousand miles, for the purpose of revenge, in pathless woods; over hills and mountains; through large cane swamps, full of grape-vines and briars; over broad lakes, rapid rivers, and deep creeks; and all the way endangered by poisonous snakes, if not with the rambling and lurking enemy, while at the same time they were exposed to the extremities of heat and cold, the vicissitude of the seasons; to hunger and thirst, both by chance, and their religious scanty method of living when at war, to fatigue, and other difficulties. Such is their overboiling revengeful temper, that they utterly condemn all those things as imaginary trifles, if they are so happy as to get the scalp of the murderer, or enemy, to satisfy the supposed craving ghosts of their deceased relations. Though they imagine the report of guns will send off the ghosts of

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their kindred that died at home, to their quiet place, yet they firmly believe, that the spirits of those who are killed by the enemy, without equal revenge of blood, find no rest, and at night haunt the houses of the tribe to which they belonged; but, when that kindred duty of retaliation is justly executed, they immediately get ease and power to fly away: This opinion, and their method of burying and mourning for the dead, of which we shall speak presently, occasion them to retaliate in so earnest and fierce a manner. . . . When any casual thing draws them into a war, it grows every year more spiteful till it advances to a bitter enmity, so as to excite them to an implacable hatred to one another's very national names. Then they must go abroad to spill the enemy's blood, and to revenge crying blood. We must also consider, it is by scalps they get all their war-titles, which distinguish them among the brave: and these they hold in as high esteem, as the most ambitious Roman general ever did a great triumph. [33]

Says Stiggins:

"When one of another clan if even by chance should kill one of their blood relations on the mother's side of the family, their customary law in this is similar to the law of the Jewish legislator in reference to the manslayer excepting the city of refuge, for their law is literally whoso sheddeth man's blood by man his blood must be shed. Time nor distance can not palliate their revenge for should the perpetrator make his escape one of his brothers or cousins on his mother's side is taken. One of his blood kindred or himself must atone for the one lost, male for male and female for female. Even accidents are frequently made a matter of atonement, as far for instance as to be on business for another person and be killed by their horse the employer or one of the brothers or cousins must atone with his life for the death; for this reason they say that had it not been for him and his business the death would not have happened." [34]

To illustrate this point Stiggins describes at length an event which occurred in the year 1808 when a Creek named the Singer, described as head chief of the Creek Nation, was on an expedition to the west of the Mississippi River, accompanied by his brothers. They were frightened back to the east side by enemies, and while there one of the Singer's brothers killed another Indian belonging to Kasihta, whom he mistook for an enemy. The comrades of the man who had been slain came to the Singer's camp and found the Singer alone, his brothers having set out to visit the Kasihta and explain to them the accidental nature of what had happened. This the Singer himself then proceeded to do, and at first the explanation was accepted as satisfactory. On their way home, however, the Kasihta Indians

[33] Adair, Hist. Am. Inds., pp. 148-151.
[34] Stiggins, Ms. Hist. Narr., p. 28; cf. also Gallatin in Trans. Am. Antiq. Soc., vol II, p. 111.

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reasoned that inasmuch as their brother had been killed it would be only just to kill the brother of the murderer, and accordingly they went back to the camp of the Singer and killed him in spite of his prominent position in the nation.[35]

According to Eakins, the proper "avenger of blood" was the own brother of the deceased, or, failing him, the nearest male blood and clan relative.[36]

Bossu says that "the law is that the one who has killed must be killed; except in case of a mischance, as in drunkenness, in a transport, or in games,"[37] but, as we have seen, such excuses did not always serve to protect the offender. The same writer also states that the French of Fort Toulouse and the Alabama had a standing agreement that if a Frenchman killed an Indian he must lose his life and vice versa, and an actual example is cited.

The following illustrates the Indian attitude still further. On being asked by Hawkins regarding the native Muskogee custom of punishing in cases of accidental death with the same severity as where there had been a manifest intention to kill, Ifa hadjo, the great medal chief of Tukabahchee and speaker of the nation in the national council, replied:

"This custom of ours is a bad one, blood for blood; but I do not believe it came from E-sau-ge-tuh E-mis-see, but proceeded from ourselves. Of a case of this sort, I will give you my opinion, by my conduct. Lately, in Tookaubatche, two promising boys were playing and slinging stones. One of them let slip his sling, the stone flew back and killed his companion. The family of the deceased took the two boys, and were preparing to bury them in the same grave. The uncles, who have the right to decide in such cases, were sent for, and I was sent for. We arrived at the same time. I ordered the people to leave the house, and the two boys to remain together. I took the uncles to my house, raised their spirits with a little rum, and told them, the boy was a fine boy, and would be useful to us in our town, when he became a man; that he had no ill will against the dead one; the act was purely accidental; that it had been the will of E-sau-ge-tuh E-mis-se to end his days, and I thought that the living one should remain, as taking away his life would not give it to the other. The two uncles, after some reflection, told me, as you have advised us, so we will act; he shall not die, it was an accident."[38]

The permanent conversion of the Indians may well be doubted, but the ancient law is well illustrated by the circumstance. Hawkins

[35] Stiggins, Ms. Hist. Narr., pp. 39-41.
[36] Eakins in Schoolcraft, Ind. Tribes, vol. i, p. 227.
[37] Bossu, Nouv. Voy., vol. ii, p. 44, footnote.
[38] Hawkins in Ga. Hist. Soc. Colls., vol. iii, p. 61.

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has the following to say regarding murder in the stricter sense of that term:

"If murder is committed, the family and tribe alone have the right of taking satisfaction. They collect, consult and decide. The rulers of the town, or the nation, have nothing to do or to say in the business. The relations of the murdered person consult first among themselves, and if the case is clear, and their family or tribe are not likely to suffer by their decision, they determine on the case definitely. When the tribe may be affected by it, in a doubtful case, or an old claim for satisfaction, the family then consult with their tribe; and when they have deliberated and resolved on satisfaction, they take the guilty one, if to be come at. If he flies, they take the nearest of kin, or one of the family. In some cases, the family which has done the injury promise reparation; and in that case are allowed a reasonable time to fulfill their promise; and they are generally earnest of themselves, in their endeavors to put the guilty to death, to save an innocent person.

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"This right of judging, and taking satisfaction, being vested in the family or tribe, is the sole cause why their treaty stipulations on this head, never have been executed. In like manner, a prisoner taken in war, is the property of the captor and his family, it being optional with his captor, to kill or save him at the time. And this right must be purchased, and it is now the practice, introduced within a few years, for the nation to pay. The practice has been introduced by the agent for Indian affairs, and he pays on the orders of the chiefs, out of the stipend allowed by the United States to the Creeks. Claims of this sort of seventeen years standing, where the prisoner has been delivered to the order of the chiefs, have been revived, allowed and paid."[20]

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In view of these facts the following law which Hawkins induced the Creek council to adopt becomes significant:

"To declare as law, that when a man is punished by the law of the nation, and dies, that it is the law that killed him. It is the nation who killed him; and that no man or family is to be held accountable for this act of the nation."[20]

Nevertheless it was with great difficulty that the Indian agent was enabled to secure the punishment of certain thieves and mischief-makers, some of whom had insulted the commissioners of Spain and the United States,[21] so strong was the sense of obligation to retaliate for injuries received by a fellow clansman and so great the fear of awaking it. Adair mentions several occasions on which an offender was protected by his family.[22] By 1820, however, Hodgson reports,

[20] Hawkins in Ga. Hist. Soc. Colls., vol. III, pp. 74-75.
[21] Ibid., p. 68.
[22] Ibid., p. 67.
[23] Adair, Hist. Am. Inds., pp. 182, 184.

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682 177 on the authority of a trader who had been in the Creek country 15 years, that the murderer was publicly executed and the law of private retaliation had gradually become obsolete.[33] And, about 20 years later, Eakins says:

[563] "Among the Creeks, now, however, the murderer undergoes a regular trial before some of the leading chiefs of the nation, and is dealt with according to their decision. If an Indian should murder a negro, the law is satisfied with the value of the negro being paid to the owner. The intervention of time and the fleeing of the murderer, generally allay resentment and lead to compromises. After the annual "busk," all offences are cancelled.[34] There is no distinction made in the estimate of life between the male and female."[35]

68 The administration of justice was, however, far from being Europeanized. Thus Gregg contradicts Eakins in part when he tells us that—

"They have no trial by jury, and their judicial proceedings are exceedingly summary—frequently without witnesses; for the warriors are generally too proud to deny a charge, lest it be construed into cowardice. Executions sometimes take place within an hour after the commencement of trial. Murder, rape, and a third conviction of stealing are punished with death, usually by shooting; but, in case of homicide, if claimed by the relatives of the deceased, the criminal is executed with the same kind of weapon, or, if possible, the very same, with which he committed the murder."[36]

And he adds:

"Notwithstanding the severity of these laws, they are for the most part rigorously enforced; though a commutation satisfactory to the aggrieved is still permitted to release the offender. Their laws, in cases of accidental homicide, are still more barbariously rigid than those of the other nations."[37]

681 The information which I have myself obtained corroborates in all particulars that furnished by these earlier writers. The peculiar function of the White towns in protecting escaped criminals seems, however, to have well-nigh disappeared even before the migration to Oklahoma, as my oldest informants knew nothing about it. Jackson Lewis merely stated that a man who had committed an offense in one town frequently fled to another and kept out of sight as much as possible until a considerable period had elapsed. Then the chief of the town where he had sought refuge would say to the chief of the other town: "I have made a townman of this friend of yours and I

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[33] Hodgson, Journey through N. A., p. 267.

[34] This agrees with the statement of one of Spark's informants (Mem. Am. Anth. Assn., vol. II, p. 113), but anciently murder was one crime excepted from the general amnesty.

[35] Schoolcraft, Ind. Tribes, vol. I, p. 277.

[36] Gregg, Commerce of the Prairies, in Early Western Travels, vol. 20, p. 215.

[37] Ibid., pp. 215-216.

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desire him to be made free." Frequently this was done and he suffered no punishment. 681

Among the Alabama retaliation for murder rested, as among the Creeks, with the clan of the victim. Upon one occasion, after this tribe had removed to Louisiana and Texas, one of the Louisiana Alabama killed another and fled to Texas. Sometime afterward he suddenly appeared among the people he had left while a dance was going on. The men belonging to the clan of the murdered man then got their guns, came to the place, and killed him. He on his part crouched by the fire and made no attempt to escape. Evidently he had decided deliberately that death was better than banishment. 628 682 614

There is no instance recorded of an old person being killed to save his family the trouble of supporting him, and Bartram is insistent that such cases occurred rarely, and only at the earnest request of the victim.[38] Bossu says that "the old people who can not follow during a retreat ask to be killed with blows of clubs, as well to spare them the grief of decrepitude as for fear lest they fall into the hands of their enemies, and be burned or eaten,"[39] but he is careful to explain that death was inflicted upon the aged only from motives of humanity. Says Romans: "They revere old age to excess," but he adds, "in extreme sickness they will out of compassion break the neck of the decrepit or lingering patient."[39a] 888

Infanticide was practiced under certain circumstances, as the following from Swan shows: 847

"If a young woman becomes pregnant by a fellow whom she had expected to marry, and is disappointed, in revenge, she is authorized by a custom of the country, to destroy the infant at the birth, if she pleases, which is often done, by leaving it to perish in the swamp where it was born, or throwing it into the water. And, indeed, to destroy a new-born infant is not uncommon in families that are grown so numerous as to be supported with difficulty; it is done by mutual consent of the clan and parents, and without remorse."[40]

This is supported by Milfort:

"In this nation the children all belong to the mother, who has the right of life and death over the one to whom she has just given birth, during the first month following her confinement. This time having expired, if she should kill it she would herself be punished with death."[41]

Witchcraft was often given as the reason for killing a certain person, but it must be remembered that the person was not destroyed 754 683

[38] Bartram, Travels, p. 497.
[39] Bossu, Nouv. Voy., vol. II, pp. 28-36.
[39a] Nat. Hist. E. and W. Fla., p. 86.
[40] Swan, in Schoolcraft, Ind. Tribes, vol. V, p. 272.
[41] Milfort, Mém., p. 351.